

VOF EASEMENT GUIDELINES

These guidelines are intended to provide guidance to landowners considering whether to convey an open space easement to the Virginia Outdoors Foundation (VOF). They are not to be considered as regulations.

A proposed easement must preserve and protect in perpetuity the open-space values of the property being put under easement. The property's open-space values and any historic, natural, scenic, scientific, or recreational values are evaluated by staff, are set forth in the deed of easement, and are described in the documentation of the property contained in VOF files and records.

The specific terms of an open-space easement vary according to the characteristics of your property. Evaluation by staff takes into account the following:

- The size, topography, and natural features of your property, and improvements on the property.
- The average parcel sizes of properties in the area and topography of the surrounding area.
- Your property's individual characteristics, its significant resources, its conservation values, and the specific protections needed to sustain those particular values.
- Restrictions necessary to protect the conservation values of your property might include limitations on divisions of the property, limitations on the number and size of improvements that can be constructed on the property, no-build areas, riparian buffers, etc.

Section I describes the specific provisions expected to be included in a VOF easement. Section II provides important background information on the essential components of an open-space easement.

I. SPECIFIC EASEMENT PROVISIONS

A. Size of Property

Easements on properties less than 50 acres in size must contribute to or add to a designated conservation resource and provide a high level of protection for the identified conservation values of the property to be considered for acceptance.

B. Division of Land

To protect open space, properties should remain as a whole to the extent possible and parcelization should be minimized. Your property will be considered as a single unit for the purpose of permitted easement divisions despite its number of tax parcels or the number of subdivisions that may be permitted by the locality in which the property is situated. For properties containing limitations on developable acreage, such as mountainous terrain, or properties whose conservation values indicate a particular limitation on development, such as scenic open land visible from public roads, **VOF may require fewer parcels than the maximum number set forth below.**



In general, the following density restrictions are the **maximum** that will be permitted. For properties with significant portions of land with development limitations, such as wetlands or steep slopes, these density restrictions should be applied to the developable acreage of your property, and not to the total acreage.

Properties of less than 100 acres should remain as a whole. The easement should not permit any division or any conveyance except as a whole.

Properties between 100 and 149 acres: VOF staff will recommend that your property remain as a whole. In certain circumstances, two parcels may be permitted provided that the other terms of the easement, such as number and/or size or locations of dwellings, building setbacks, riparian buffers or other natural resource protections create an otherwise equivalently protective easement.

Properties of 150 to 249 acres: VOF staff will recommend that your property remain as a whole or in no more than two parcels.

Properties of 250 to 299 acres: VOF staff will recommend that your property remain as a whole or in two parcels. In certain circumstances, three parcels may be permitted provided that the other terms of the easement, such as number and/or size or locations of dwellings, building setbacks, riparian buffers or other natural resource protection create an otherwise equivalently protective easement.

Properties of 300 acres to 599 acres: VOF staff will recommend an overall density of no more than one parcel per 100 acres (e.g. 440 acres: a maximum of four parcels.). Properties of 600 to 799 acres: a maximum of six parcels. Properties of 800 to 999 acres: a maximum of seven parcels;

Properties of 1,000 acres or more: VOF staff will recommend a maximum of eight parcels. Additional parcels may be permitted on larger acreages on a case by case basis.

There is, in most cases, no minimum acreage requirement for parcel size. Subdivided parcels may be small lots that allow retention of the maximum open space on the remainder of the property to maintain a viable size for farming or forestry. The sliding scale is intended to encourage the preservation of large intact tracts of land.

C. Dwellings

Number of Dwellings: One dwelling for each of the permitted parcels is normally permitted. A second dwelling for one or more of the permitted parcels may be permitted, provided that the aggregate square footage of above-ground enclosed living area of the two dwellings is limited. Barn or garage apartments count in the number of permitted dwellings and their aggregate square footage. Existing habitable dwellings of any kind count in the number of permitted dwellings and their aggregate square footage.

Sizes of Dwellings: Generally, square footage of above-ground enclosed living area for the dwelling(s) on each permitted parcel may not exceed an aggregate of 6,500 square feet of above-ground enclosed living area, and each dwelling may not individually exceed 4,500 square feet of above-ground enclosed living area without VOF's prior review and written approval.

Locations of Dwellings: Location of dwellings may be limited to preserve the view from such public places as roads, rivers, parks, outlooks, etc. or to protect a natural or historic resource particular to the property.



D. Farm Buildings and Structures

Farm buildings and structures may not exceed 4,500 square feet in ground area (or if the property is less than 50 acres in size 2,500 square feet in ground area) without the prior written approval of VOF. On large working farms, the size threshold for review of new farm buildings or structures may be increased to a threshold size of up to 10,000 square feet.

E. Other Typical Restrictions:

- **Forestry:** Forestry is permitted, provided that VOF has approved a forest stewardship management plan and a pre-harvest plan prior to a timber harvest and that Best Management Practices are used to control erosion and protect water quality when a timber harvest is undertaken. Additional limitations may be appropriate on specific properties.
- **Riparian (stream buffer) Protection:** To achieve water quality protection, riparian buffers are strongly recommended along all streams, rivers, or other significant water resources on the property. The most effective buffers exclude livestock from the waterway.
- **Mining:** Mining and other activities that would alter the natural topography of the land are not permitted with exceptions for construction of permitted improvements, generally accepted farming practices, erosion and sediment control measures, and similar activities that do not impair the conservation values of the property.
- **Scenic Protection:** To protect scenic resources, no-build areas or setbacks from roads, rivers, or historic structures may be required and large signs, accumulation of junk or trash, and certain commercial structures such as large scale cell towers are not permitted.

F. Stewardship: Monitoring and Enforcement

VOF is permitted to inspect the property periodically and to enforce the restrictions set forth in the deed of easement. Proposed restrictions other than those identified above and contained in the standard form easement template must have clearly delineated conservation purposes, must be readily observable by staff during routine monitoring visits, and restrictions must be practicable to monitor and enforce.

II. GENERAL CHARACTERISTICS OF AN OPEN-SPACE EASEMENT

An open-space easement is an interest in property that restricts how the property may be used in order to protect certain conservation values on the property. The easement need not permit public access to benefit the public, but to be accepted by VOF an easement must have significant public benefit.

A. The Public Benefit of an Open-Space Easement

The General Assembly has determined that the conveyance of an open-space easement to certain public or private conservation entities provides benefits to the general public and to the Commonwealth. Such benefits might include: (1) preservation of a unique property, (2) limitation on the development of a property where development would impair its scenic, natural, or historic character or the historic rural landscape, or (3) protection of water quality of rivers and streams in the watershed in which the property is located.

The VOF board and staff make use of both state and federal statutes and regulations for guidance in determining whether a proposed easement demonstrates adequate public benefits to justify its acceptance. Virginia Code Section



10.1-1800 states that it is in the public interest for VOF to preserve areas of the Commonwealth having natural, scenic, historic, scientific, open-space, or recreational characteristics (see Attachment A for detailed amplification of these characteristics). In determining the public benefit of an easement, VOF board and staff also take into consideration Internal Revenue Code Section 170(h)(4)(A) (see Attachment B) and accompanying Treasury Regulations.

B. The Conservation Values of a Property

Conservation values to be protected by an open-space easement include: wetlands, riparian corridors, wildlife habitat, biological diversity, unique species, historic resources, productive agricultural or forestal lands, scenic resources, unique geological features, municipal water supply watersheds, and critical slopes.

In addition, an important consideration is the property's proximity to designated statewide resources such as scenic rivers, scenic highways or Virginia by-ways, state or national parks, wilderness areas, properties listed on the Virginia Landmarks Register, state forests, wildlife management areas, state natural area preserves, water supply reservoirs, or land under conservation easement.

Finally, one of the most important conservation values to be protected by placing a property under open-space easement is the preservation of working farmland and forest land in rural areas and their protection from industrial or commercial overdevelopment.

C. Compliance with Governmental Law and Policy

In determining whether a property is appropriate for an easement, VOF considers its designation within or identification in a statewide planning document such as The Virginia Outdoors Plan and its inclusion or eligibility for inclusion in a register such as the Virginia Landmarks Register.

VOF also must make a determination that the use of the property as open-space land conforms to the official comprehensive plan for the locality in which the property is located. It also considers the current zoning of the property and its designation on the locality's future land use map.

In deciding whether an easement can be accepted, VOF considers whether an easement may interfere with any anticipated or planned public works project. In doing so VOF weighs the importance of conservation values of the property which may be compromised against the importance of the public works project, the extent to which planning for the public works project has been finalized, and the practicality and availability of other options for achieving the purpose of the public works project. It may insert provisions in the deed of easement to forestall a conflict between the public works project or may decide not to accept the easement.

III. TERMS OF APPROVAL

If an approved easement has not been executed and recorded within one year from the date of acceptance by the VOF Trustees, it must be resubmitted to the Trustees for approval. Reconsideration of a project after the one year initial approval date may be subject to a \$1,000 fee.

The terms of a VOF easement shall not be construed to permit any use of the property which is otherwise prohibited by federal, state, or local law or regulation.



ATTACHMENT A
Guidelines for VOF Staff to Use in Evaluating Potential Easement Properties

Criteria for determining property characteristics:

NATURAL (meets one of the following):

- A. The property is in a relatively natural state defined by areas:
- With little or no land disturbance or clearing of vegetation;
 - Providing habitat for rare, threatened, or endangered species;
 - Of high biological diversity as determined by a qualified professional;
 - Within a designated wilderness, park, or public forest area;
 - Having unique geological features.
- B. The property includes lands designated by a federal, state, or local government, or recognized organization as:
- Wetlands;
 - Wildlife habitat, including travel corridors;
 - Riparian corridors, public water supply watersheds, Chesapeake Bay Resource Protection Areas, Resource Management Areas, flood plain protection areas, or other lands important to water quality or quantity;
 - Steep or critical slopes; or
 - Prime or locally important agricultural or forestal soils.

SCENIC (meets one of the following):

- A. The property is listed in a state, or regional, or local landscape inventory (including site-specific listing in the local Comprehensive Plan).
- B. The property is visually accessible from a park, nature preserve, road, recreational water body, trail, or historic structure or land area, is open to or used by the general public, and possesses scenic characteristics. Examples of factors used in defining a particular view as “scenic” include: 1) the compatibility of the land use with other land in the vicinity; 2) the degree of contrast and variety provided by the visual scene; 3) the openness of the land; and 4) the harmonious variety of shapes and textures.

HISTORIC (meets one of the following):

- A. The property is a historically important land area, such as:
- An independently significant land area (for example an archaeological site or a battlefield) that is listed on or meets the criteria for listing on the State and/or



- National Register;
 - A land area listed on the State and/or National Register or within a Rural Historic District;
 - A land area identified by the City or County Comprehensive Plan as having local historic significance; or
 - A land area identified and documented by a recognized organization as having local historical significance.
- B. The property includes a historic structure and/or resides in a historic setting. Examples include:
- Any building, structure, or land area that is listed on or meets the criteria for listing on the State and/or National Register;
 - A supporting structure located within a registered Historic District;
 - A structure identified by the City or County Comprehensive Plan as having historical significance; or
 - A structure identified and documented as having local historic significance (including an example of an architectural style, an association with a historical event, or an association with a historical figure).

Note: In the case of a property that has a State and/or National Register site on it, VOF recommends that the landowner consider donating a historic preservation easement to the Virginia Department of Historic Resources.

SCIENTIFIC:

The property includes a site used for scientific research or is determined to be appropriate for the systemic (systematic) and objective collection of data under the direction of a qualified individual in the field of natural science. Examples include a grove of trees resistant to a wide-spread virus, or a unique karst cave system.

OPEN-SPACE:

The preservation of the property is pursuant to a clearly delineated governmental policy or provides scenic enjoyment to the general public as described above. Examples of governmental policy include farmland and forests within an Agricultural and Forestal District, or forestland within a Mountainside Overlay or Conservation District, land within a Rural Historic District or other designation indicative of State conservation policy. Please refer also to note on minimum acreage.

RECREATIONAL:

The property is regularly accessible for use and enjoyment by the general public and contains resources of educational value or offers recreational opportunities, such as a water area used by the public for boating or fishing, or a nature or hiking trail open to the public.



ATTACHMENT B
Guidance from Internal Revenue Code

Internal Revenue Code Section 170(h)(4)(A) defines conservation purposes as:

- i. The preservation of land areas for outdoor recreation by, or the education of, the general public.
- ii. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.
- iii. The preservation of certain open space (including farmland and forest land) where such preservation is:
 - a. For the scenic enjoyment of the general public and will yield a significant public benefit, or
 - b. Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit.
- iv. The preservation of an historically important land area or a certified historic structure.

Note: The Virginia Outdoors Foundation cannot guarantee that an easement will qualify for a federal income tax deduction under IRS criteria or a state tax credit under Virginia law. Donors should consult with qualified tax advisors to determine the tax effect in their particular situation. VOF is not involved in determining the value of an easement for tax purposes. This determination must be made by a qualified independent appraiser.